

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TAMERA L. FRIEDRICHSEN,

Plaintiff,

V.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

4:09CV3069

MEMORANDUM AND ORDER

This matter is before the court upon Plaintiff's application for attorney fees pursuant to the Equal Access to Justice Act, [28 U.S.C. § 2412 \(filing 21\)](#). Defendant has no objection to the awarding of fees and expenses in the amount of \$1,232.44, the amount requested by Plaintiff, which represents 7.15 hours of work at \$172.37¹ per hour.

The court has determined that Plaintiff was indeed the prevailing party in this action, as this action was remanded to the Secretary for further action; that the application for fees was filed in a timely fashion²; and that the position of the Commissioner was not substantially justified because the ALJ did not give consideration to whether a significant number of jobs exist in the national economy that Plaintiff can perform with the limitations assessed in the residual functional

¹The maximum hourly fee of \$125.00 specified in 28 U.S.C. § 2412(d)(1)(D)(2)(A) was adjusted to account for inflation (Ex. C to Mem. in Supp. of Application for Fees).

²An EAJA fee application based on a district court judgment remanding a case pursuant to sentence four of [42 U.S.C. § 405\(g\)](#) must be filed within 90 days of the sentence four judgment. [Shalala v. Schaefer, 509 U.S. 292, 302 \(1993\)](#).

capacity finding. Therefore, Plaintiff is entitled to an award of attorney fees.

IT IS ORDERED:

1. Plaintiff's application for attorneys fees pursuant to the Equal Access to Justice Act ([filing 21](#)) is granted; and

2. By separate document, the court shall enter judgment for Plaintiff and against Defendant providing that Plaintiff is awarded attorney fees of \$1,232.44.

August 24, 2009.

BY THE COURT:

Richard G. Kopf

United States District Judge

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